IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 15459 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE JAYANT PATEL

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

CHHABILDAS RAMJIBHAI VAGHELA

Versus

DISTRICT DEVELOPMENT OFFICER, SURENDRANAGAR & ANR.

Appearance:

1. Special Civil Application No. 15459 of 2003

MR DHAVAL D VYAS for the Petitioner

MR G.RAMAKRISHNAN with MS RV ACHARYA for Respondent No. 1

MR BM MANGUKIYA for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE JAYANT PATEL

Date of decision: 08/10/2004

ORAL JUDGEMENT

RULE. Learned advocates Mr.Mangukiya and

Mr.Ramakrishnan waive service of rule. With the consent of the parties the matter is taken-up for final hearing today.

The question which arises for the consideration is, whether it was required to hold an inquiry considering the facts and circumstances of the case at the level of the District Development Officer while exercising power under Section 57 of the Gujarat Panchayats Act, 1993 (hereinafter referred to as "the Act")?

Upon hearing the learned counsels Mr.Vyas for the petitioner and Mr.Ramakrishnan with Ms.Acharya for the respondent No.1, it appears that in view of the decision of this Court in the matter of Kamlaben Rohitbhai Patel v/s. Additional Development Commissioner reported at 2002(2) GLR 1174 in respect of the procedural irregularity or accounting matters, the inquiry is required to be held while exercising power under Section 57 of the Act. On perusal of the order passed by the District Development Officer as well as by the Development Commissioner, it is found by them that no further inquiry is required to be held and it appears the power is exercised on the basis of the material which was available on record. There cannot be any absolute proposition that in every case, while exercising power under Section 57 of the Act, inquiry is required to be held. However, it may vary from facts of each case.

If the matter is examined in light of the above referred decision of this Court, it appears that in the present case also the matter is pertaining to the financial irregularity in giving the contract and the major allegation is in respect of the charge that the tenders were not invited and there is no allegation that any financial benefit is procured by the petitioner in capacity as the Sarpanch of the Gram Panchayat. Further, no enquiry is held by the authority on the ground as to whether it was the responsibility of the petitioner in capacity as the Sarpanch of maintaining the accounts and of maintaining the vouchers or it was the Talati-cum-Mantri who had to maintain the same. It has also not been enquired as to whether it would be feasible for a small Gram Panchayat to give public advertisement and to incur expenses of advertisement when the subject matter of the contract is a small amount ranging from Rs.3,000=00 to Rs.9,000=00.

The authorities have proceeded on the basis that in majority of the allegations as the tenders are not

invited there is misuse of power. Had it been a case of giving contract of higher amount, normally it would be required for any public authority to invite offers and to give opportunity to all concerned and thereafter to take appropriate decision. In the present case, as the amount was less than Rs.10,000=00 and publishing advertisement may require spending of expenses which may not be less than 25% of the total amount, it was required by the authority to examine as to whether the other mode is followed and, if followed, whether any net financial loss is caused to the Gram Panchayat while undertaking the work. The orders passed by both the authorities in majority of the allegations pertain to the same, more particularly, so far as the allegation of misappropriation of Rs.480=00 is concerned, the same is not found as proved by the District Development Officer and the Development Commissioner has not properly considered the said finding of the District Development Officer. Therefore, the points on which the show-cause notices were issued in majority pertain to the irregularity and not following the proper procedure but they do not relate to procuring any financial benefit on account of such irregularity. Such is not even the ground in the show-cause notice qua those allegations and, even if the authority has to consider the same, it is required to be enquired into as to whether any financial benefit is procured by the petitioner in capacity as the Sarpanch of the Gram Panchayat. As the inquiry has not been held on the said aspect and, considering the facts and circumstances, more particularly in view of the above referred decision of this Court in the case of Kamlaben Rohitbhai Patel (supra), it would be just and proper to direct the authority to hold the enquiry in light of the observation made by this Court hereinabove and then to take a fresh decision in accordance with law.

Mr.Mangukiya, learned counsel appearing for the respondent No.2 who is a Deputy Sarpanch holding the charge of the Sarpanch since the post has fallen vacant, has submitted that the respondent No.2, in capacity as the Deputy Sarpanch, was party to the proceeding before the Development Commissioner and, therefore, since he is impleaded as party, Mr.Mangukiya is also heard. However, it may be recorded that the role of the Deputy Sarpanch in a matter of removal under Section 57 of the Act is not as that of person directly affected in capacity as the advisory respondent but, at the most, since the matter pertains to the administration of the Panchayat, he can be said to have right to place the material as and when the authority is considering the matter and, therefore,

while holding the enquiry if the respondent No.2 wants to place certain material before the District Development Officer, the same may be considered in accordance with law. This direction does not mean that any right can be said to have been vested with the respondent No.2 to continue with the litigation or right to be heard.

In view of the aforesaid discussion I find that the following directions shall meet with the ends of justice :

(1) The proceedings before the District Development Officer under Section 57(1) of the Act for removal of the petitioner shall stand restored to his file and the District Development Officer shall enquire the matter in light of the observations made by this Court hereinabove and shall take appropriate decision as early as possible preferably within period of three months from the receipt of the order of this Court. The decision shall be rendered after giving opportunity of hearing to the petitioner;

(2) In view of the aforesaid directions, the District Development Officer shall pass a fresh order in accordance with law and the impugned orders passed by the District Development Officer as well as by the Development Commissioner shall not remain in operation after passing of the fresh order by the District Development Officer as indicated hereinabove;

(3) Until the aforesaid procedure is undertaken, the status quo existing as on today qua the post of the Sarpanch of Gram Panchayat, Chotila shall continue and, in the event if the District Development Officer passes the order of dropping the proceedings, the petitioner will be entitled to resume the office as the Sarpanch of the Gram Panchayat and, in the event the order is passed for removal, the petitioner may resort to the remedy as available under law for challenging the order.

(4) If the respondent No.2 places any material during the course of the enquiry before the District Development Officer, the same may also be considered in accordance with law.

Petition is partly allowed. Rule made absolute

accordingly. Considering the facts and circumstances, no cost.

(Jayant Patel, J.)

/sakkaf